



# State of Connecticut

## Office of Consumer Counsel

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**The Energy and Technology Committee**  
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### **H.B. 6634, AAC Protecting Certain Telephone And Television Customers**

#### **Testimony of Mary J. Healey, Consumer Counsel Presented by William Vallée, Principal Attorney**

The Office of Consumer Counsel (OCC) has carefully reviewed section one of H.B. 6634, AAC Protecting Certain Telephone And Television Customers, a bill intended to provide certain protections for telephone customers and provide greater access to the Connecticut Television.

The OCC believes that the issue of attempting to regulate voice over Internet Protocol ("VoIP") providers as public service companies has been litigated for years now and the conclusion is clear: **federal law preempts all state regulations**. Accordingly, the OCC would recommend that this provision be stricken from the bill in order to avoid the potentially protracted litigation that would undoubtedly result from an attempt to define such providers as regulated under Title 16 of the Connecticut General Statutes.

The sentiment is right and reasonable: as the use and sale of VoIP services grow throughout the telecommunications industry, certain abuses in the retail and wholesale provision of these services of course become more pronounced. That said, the OCC is not aware of consumer complaints of any large number, certainly not approaching the difficulties the OCC has encountered in local telephone service by the incumbent. This is amply demonstrated by the ongoing DPUC docket resulting from the OCC's July 2008 petition that has in turn generated H.B. No. 6608, AAC Consumer Protection In Telecommunications Companies, just heard by the E&T Committee last week.

At present, the competitive local exchange carriers have minimal regulation, through state and federal legal design, and the proposed language would in fact impose greater regulation on this far-less mature market. Further, the OCC would analogize VoIP services at this point in the market's history with wireless phones, which are not phones at all, but are in fact radios and are regulated by the FCC as such. That market has flourished without state regulation and, while the complaints concerning most notably billing have increased, there have been numerous accommodations reached to restrain the most blatant consumer abuses. It may well be in the

future that wireless phones will receive a higher level of regulation as the market matures and the numbers of consumers utilizing that service increases.

In spite of a federal preemption from regulation, for example like the wireless providers operating in this state, VoIP providers must contribute to certain funding requirements such as universal service programs like all telecommunications providers, link all customers with the state's E911 service, make available number porting when customers move their service, and other public policy goals.

It seems likely, therefore, that as the retail VoIP mature as the service rolls out, this voluntary compliance with state regulations will grow through competitive pressures. The OCC will assure the Committee that should this service begin to generate complaints of any magnitude that the OCC will lead the charge to regulate this service, providing the legal foundation allows. At present, however, the nascent market for retail VoIP services has been determined by the FCC to explicitly require freedom from regulation in order to develop and compete with existing long-established technologies.

VoIP should not, in essence, be compared to the basic services rendered by, for instance, AT&T which is a "telephone company" under state law and is thus subject to extensive regulation. With over 90% of the residential market in Connecticut for telecommunications, not including the company's extensive market share for wireless services, state law properly categorizes AT&T in a way that provides for the maximum regulations for its services.

In order to understand the legal foundation for the FCC's position to date, I have compiled an attached summary of legal precedents (attached) that indicates a diversity of state statutes attempting to regulate retail VoIP services would interfere with the interstate aspect of this service in violation of basic U.S. Constitutional principles, most notably the Commerce Clause. The OCC remains fearful that any attempt by the state legislature could result, as it has in many other states, in protracted and unproductive litigation.

## OVERVIEW OF FEDERAL REGULATORY STATUS OF VOIP SERVICE

About five years ago, the FCC determined that VoIP services offered by many if not all VoIP providers were interstate in nature and the federal regulator accordingly preempted states from applying regulations on providers of this technology. While the case in question involved the services of only one provider, Vonage, the FCC held that its preemption order applied to an entire array of VoIP services. This would presumably include VoIP services offered by “cable companies” or quite possibly “telephone companies”, thus increasing the potential for legal challenges from any number of providers.

The OCC would note that it was the lead plaintiff in a federal lawsuit commencing with a DPUC docket in 2005, OCC v. AT&T, that is still wending its way through the courts. VoIP services, while not identical to the Internet Protocol Television (IPTV) that lies at the heart of OCC v. AT&T, are quite similar in that they also involve the national policy imposed by the U.S. Congress and the FCC of not regulating the Internet.

That said, the FCC continues to examine the question of how to properly classify VoIP services and there have been certain variations of the service that have not fallen into the “information service” category (which is not regulated, being like the Internet in nature), and which accordingly have been held to be a telecommunications service, subject by FCC decree to regulation in various forms.

For instance, as mentioned above, the FCC continues to investigate the proper classification of VoIP services and has in fact held that merely using Internet Protocol to transmit voice telephone calls does not render that service VoIP. This use of Internet Protocol, basically for trunking calls across a telephone network without separate IP services directly involving the customers, is used fairly widely in the industry and has not yet been determined to transform the service into what is regarded as VoIP.

The OCC hopes that this short legal summary is helpful to the Committee and provides the members with the assurance that the issue of federal preemption remains an impediment to imposing public service company regulation on this service at this time. Again, as mentioned in the body of the testimony, the OCC stands ready to lead the charge should the federal preemption issue be resolved in favor of expanded regulation by the states.